

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

UNITED STATES OF AMERICA,

VS.

CRIMINAL ACTION NO. 1:04CR92-P-D

KENNETH WEBB,

DEFENDANT.

ORDER

This matter comes before the court upon Defendant's Motion for New Trial [63-1] pursuant to Federal Rule of Criminal Procedure 33. Upon due consideration of the motion and the Government's response filed thereto, the court finds as follows, to-wit:

Rule 33(a) provides in pertinent part that "[u]pon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires." "[N]ew trials are granted only upon demonstration of adverse effects on substantial rights of a defendant." *U.S. v. Cooks*, 52 F.3d 101, 103 (5th Cir. 1995). "A motion for new trial is addressed to the discretion of the court, which should be exercised with caution, and the power to grant a new trial ... should be invoked only in exceptional cases....' Where a court finds that a miscarriage of justice may have occurred at trial, ... this is classified as such an 'exceptional case' as to warrant granting a new trial in the interests of justice." *U.S. v. Scroggins*, 379 F.3d 233, 239 (5th Cir. 2004) (citation omitted), *rev'd on other grounds*, 543 U.S. 1112 (2005).

Having considered the defendant's arguments and the Government's responses thereto, the court concludes that given the circumstances and the weight of evidence, there were neither adverse effects on the substantial rights of the defendant nor any conduct constituting a miscarriage of justice warranting a new trial in this matter.

IT IS THEREFORE ORDERED AND ADJUDGED that Defendant's Motion for New Trial [63-1] is **DENIED**.

SO ORDERED this the 10th day of March, A.D., 2006.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE